

## REMARKS

The pending Office Action address claims 1, 3, 7, 11, 12, 16-19, 25-28, 33, 34, and 52-62. Claims 1, 3, 7, 16-19, 25, 27, 28, 33, and 52-62 are rejected, and remaining claims 11, 12, 26, and 34 are withdrawn from consideration.

### *Claim Amendments*

Claim 28 is amended to recite that the first and second opposed alignment tabs are adapted to non-fixedly interact with an edge of a spinal plate without engaging the spinal plate. Support for this amendment can be found, for example, in paragraph 36 of the specification.

Claim 63 is new, and recites a guide device for use with a spinal plate having at least one pair of screw bores formed therein. The guide device includes an elongate shaft having a proximal end and a distal end, a guide member coupled to the distal end of the elongate shaft and including first and second lumens extending therethrough, and first and second opposed alignment tabs extending distally from opposed outer edges of opposed ends of the guide member. The tabs have a concave inner surface such that the tabs are adapted to interact with a convex portion of a spinal plate to position the guide member with respect to the spinal plate such that the first and second lumens in the guide member are aligned with a pair of corresponding screw bores formed in the spinal plate. Support for this new claim can be found, for example, in paragraph 38 of the specification. No new matter is added.

### *Rejections Pursuant to 35 U.S.C. §102*

Claims 1, 3, 7, 16-19, 25, 27, 28, 33, and 52-62 are rejected pursuant to 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 5,423,826 of Coates et al. Applicants respectfully disagree.

At the outset, Coates does not teach or even suggest a guide member coupled to a distal end of an elongate shaft and including first and second lumens extending therethrough, as required by all the independent claims. While the device of Coates has two shafts, each with a guide, namely the feet (157) mated to a distal end thereof, neither foot (157) has two lumens extending therethrough. Rather, the drill guide of Coates includes two feet (157), each having a single thru-hole (158) extending

therethrough. The claims clearly require that the two lumens be formed in the same guide member. The Examiner is combining separate parts to render the rejection, which is improper. Coates does not have a single guide member with two lumens extending therethrough, as required by the claims.

With regard to independent claims 1 and 52, Coates also fails to teach or suggest a guide member including first and second lumens extending therethrough in *fixed relation* to one another. As discussed above, Coates is directed to a drill guide including two arms (151, 152), each having a foot (157) with a thru-hole(158) extending therethrough. The feet (157) are pivotally coupled to the arms (151, 152). As a result, the thru-holes (158) do not extend in a fixed relation to one another, but rather are freely movable. Moreover, a threaded locking rod (155) extends through and threadably mates to the arms (151, 152) such that rotation of the locking rod (155) using an adjustment knob (154) pivots the arms. As the arms (151, 152) pivot with respect to one another, the distance between the thru-holes (158) in the feet (157) increases or decreases. Thus, the thru-holes (158) extending through the feet (157) further do not remain in a fixed relation to one another, as required by independent claims 1 and 52.

Regarding independent claim 28, Coates also fails to teach or suggest first and second opposed alignment tabs being adapted to non-fixedly interact with an edge of a spinal plate without engaging the spinal plate. Instead, the small hooks (161) on each of the feet (157) of the Coates device are used to attach to notches formed in a bone plate. As explained at Column 13, lines 9-12, “[a] small hook 161 on each foot 157 of the guide attaches to a notch 159 on each end of the plate 20. The locking mechanism 153 is then tightened to firmly attach the guide 150 to the plate 20.” Since the hook clearly engages the notches to *firmly attach* the guide to the plate, the hooks cannot formed the claimed tabs because the claimed tabs are adapted such that they will *not engage a spinal plate*. Thus, Coates does not teach tabs that are adapted to non-fixedly interact with an edge of a spinal plate without engaging the spinal plate.

Coates further fails to teach features of new independent claim 63. Specifically, Coates fails to teach or suggest opposed alignment tabs having a concave inner surface such that the tabs are adapted to interact with a convex portion of a spinal plate. The hooks (161) as taught in Coates do not have a

concave inner surface. Rather, the hooks are shaped to fit around the edge of the plate and to extend into a cutout.

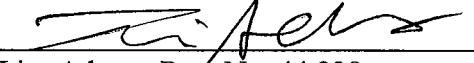
Accordingly, independent claims 1, 28, 52, and 63, as well as claims 3, 7, 16-19, 25, 27, 33, and 53-62 which depend therefrom, distinguish over Coates.

***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

Date: October 1, 2007

  
Lisa Adams, Reg. No. 44,238  
Attorney for Applicant(s)

Nutter McClellan & Fish LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210  
Tel: (617)439-2550  
Fax: (617)310-9550

1662095.1